

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:07CV136-MU-02

JOSEPH JAMES HARGROVE,)
 Petitioner,)
)
 v.)
)
ROBERT SMITH, Supt.,)
 Respondent.)

)

ORDER

THIS MATTER comes before the Court on Petitioner's Petition for a Writ of Habeas Corpus, filed December 17, 2007; and on Respondent's "Motion For Summary Judgment," filed January 23, 2008.

The record of this matter reflects that on December 17, 2007, Petitioner filed his § 2254 Petition alleging that his guilty pleas was obtained in violation of his right to due process, his combined sentence was imposed in violation of his right to a jury determination, and that he was subjected to several instances of ineffective assistance of counsel. On January 23, 2008, Respondent filed a combined Response and Motion for Summary Judgment (along with a 302-page supporting memorandum) denying that Petitioner is entitled to any relief and asserting that he is entitled to a judgment as a matter of law.

After carefully considering the two pleadings, by Order of

March 10, 2008, the undersigned entered an Order in compliance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). In that Order, the Court advised Petitioner that Respondent had filed the subject Motion for Summary Judgment; that it appeared that Respondent was entitled to a judgment as a matter of law; that Petitioner had an obligation to respond to that Motion; and that his failure to respond to Respondent's Motion within 20 days could subject his Petition to summary dismissal. Notwithstanding that stern admonition, the due date for Petitioner's response passed without incident. Indeed, more than 4 months now have elapsed since the passage of Petitioner April 2, 2008 deadline and he still has taken no action in this case.

As was previously noted, the Court has, indeed, carefully reviewed Respondent's Motion for Summary Judgment and determined that it is well taken. Consequently, for the reasons set forth in that Motion the Court finds that Respondent is entitled to a judgment as a matter of law. See Fed.R.Civ.P. 56.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent's Motion for Summary Judgment (document # 4) is **GRANTED**; and

2. Petitioner's Petition for a Writ of Habeas Corpus is
DENIED and DISMISSED.

SO ORDERED.

Signed: August 25, 2008

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

